

REMARKS

FORMAL MATTERS:

Claims 1-17 are pending after entry of the amendments set forth herein.

Claims 1 and 14 are amended. Support for these amendments is found in the claims as originally filed and throughout the specification at, for example, figure 18B.

No new matter is added.

INTERVIEW SUMMARY

The Applicants wish to express gratitude to Examiner Noguerola for the helpful telephonic interview on February 11, 2009, with the undersigned. The outstanding rejections of the claims under §102 and §103 were discussed during the interview and proposed amendments to claims 1 and 14 were discussed that would be sufficient to overcome the rejection.

The amendments to the claims presented herein reflect those during the interview, which amendments the Examiner indicated may be deemed persuasive to place the application in form for allowance.

REJECTIONS UNDER §103(A)

Claims 1, 4-6, 9-14, 16, and 17

Claims 1, 4-6, 9-14, 16, and 17 are rejected under 35 U.S.C. § 103(c) for allegedly being rendered obvious by JP 09-101280 A (“Tadahisa”) in view of Jobst et al., Sensors and Actuators B 43 (1997) 121-125 (“Jobst”). In view of the amendments to the claims and the remarks made herein this rejection may be withdrawn.

In the spirit of expediting prosecution and without conceding to the correctness of the rejection, claims 1 and 14 have been amended to further clarify that the sensors have a total of only two apertures. In particular, the claims have been amended to recite the spacer between the first and second substrates defines “a sample chamber having only a first aperture and a second

aperture, wherein the first aperture is positioned along the proximal end of the sensor and the second aperture is positioned along the first side edge of the sensor”.

In contrast, Tadahisa teaches a sensor strip having a spacer that defines an opening at the proximal end and opening at both of the left and right sides of the sensor strip – resulting in three apertures. As a result, the sample chamber of Tadahisa has a “T” configuration, where each of the working and reference electrodes are disposed at flanking ends of the chamber distal to the opening of the sample application aperture. Therefore, Tadahisa fails to teach sensor strip having a sample chamber having only two apertures – a first aperture positioned along the proximal end of the sensor and a second aperture positioned along the first side edge of the sensor.

Due to the configuration of the electrodes of the sensor of Tadahisa, the second and third apertures allows for the sample to come into contact with both electrodes at flanking ends of the chamber. Therefore, one of skill in the art would not be motivated to simply modify the sensor strip of Tadahisa to only include a first aperture and a second aperture, since this would result in the sample not being able to come into contact with both the working electrode and the reference electrode.

Jobst has been cited for teaching a biosensor having a total internal volume of 2.1 μ l. Jobst also fails to teach a sensor strip having only a first aperture along the proximal end of the sensor and a second aperture along the first side edge of the sensor. Therefore, Jobst fails to make up the deficiency of Tadahisa.

In order to meet its burden in establishing a rejection under 35 U.S.C. §103(a), the Patent Office must first demonstrate that the combined prior art references teach or suggest all the claimed limitations. MPEP § 2143(A). As noted above, the combination of cited references fails to teach each and every element of the claims. In particular, the combination of references fails to teach a sensor strip having only a first aperture along the proximal end of the sensor and a second aperture along the first side edge of the sensor. Therefore, the combination of references cannot render the present claims obvious.

As such, Applicants respectfully request that this rejection be withdrawn.

Claim 2

Claim 2 is rejected under 35 U.S.C. § 103(c) for allegedly being rendered obvious by Tadahisa in view of Jobst and further in view of Ikeda et al. US Patent No. 5,582,697 (“Ikeda”).

As noted above with respect to claim 1, which claim 2 depends from, the combination of Tadahisa in view of Jobst fails to teach a sensor strip having only two apertures – a first aperture positioned along the proximal end of the sensor and a second aperture positioned along the first side edge of the sensor. Ikeda has been cited for teaching an indicator electrode. However, Ikeda also fails to teach a sensor strip having only a first aperture along the proximal end of the sensor and a second aperture along the first side edge of the sensor. Therefore, Ikeda fails to make up the deficiency of Tadahisa and Jobst.

As such, the combination of cited references fails to teach each and every element of the claims and cannot render the present claims obvious. Therefore, Applicants respectfully request that this rejection be withdrawn.

Claims 3 and 15

Claims 3 and 15 is rejected under 35 U.S.C. § 103(c) for allegedly being rendered obvious by Tadahisa in view of Jobst and further in view of Fujiwara et al. US Patent No. 6,004,441 (“Fujiwara”) and Kurnik et al. US Patent No. 5,989,409 (“Kurnik”).

As noted above with respect to claims 1 and 14, which claims 3 and 15 depend from, the combination of Tadahisa in view of Jobst fails to teach a sensor strip having only two apertures – a first aperture positioned along the proximal end of the sensor and a second aperture positioned along the first side edge of the sensor. Fujiwara and Kurnik have been cited for teaching electrode spacing. However, both Fujiwara and Kurnik also fail to teach a sensor strip having only a first aperture along the proximal end of the sensor and a second aperture along the first side edge of the sensor. Therefore, both Fujiwara and Kurnik fail to make up the deficiency of Tadahisa and Jobst.

As such, the combination of cited references fails to teach each and every element of the claims and cannot render the present claims obvious. Therefore, Applicants respectfully request that this rejection be withdrawn.

Claims 7 and 8

Claims 7 and 8 is rejected under 35 U.S.C. § 103(c) for allegedly being rendered obvious by Tadahisa in view of Jobst and further in view of Diebold et al. US Patent No. 5,437,999 (“Diebold”) and Gregg et al. US Patent No. 5,262,035 (“Gregg”).

As noted above with respect to claim 1, which claims 7 and 8 depend from, the combination of Tadahisa in view of Jobst fails to teach a sensor strip having only two apertures – a first aperture positioned along the proximal end of the sensor and a second aperture positioned along the first side edge of the sensor. Diebold and Gregg have been cited for teaching non-leachable redox mediator and an osmium redox mediator. However, both Diebold and Gregg also fail to teach a sensor strip having only a first aperture along the proximal end of the sensor and a second aperture along the first side edge of the sensor. Therefore, both Diebold and Gregg fail to make up the deficiency of Tadahisa and Jobst.

As such, the combination of cited references fails to teach each and every element of the claims and cannot render the present claims obvious. Therefore, Applicants respectfully request that this rejection be withdrawn.

CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number ADCI-048CON5.

Respectfully submitted,
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